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- ART. I.—1. *Reports of the Committee of the House of Assembly on that part of the Speech of His Excellency the Governor in Chief, which relates to the Settlement of the Crown Lands; with the Minutes of Evidence, taken before the Committee.* Quebec. 1821.
2. *Esquisse des Affaires devant le Parlement Provincial du Bas-Canada, dans la Session qui doit s'ouvrir le 21 Janvier, 1826.* (A Pamphlet compiled from articles inserted in the Quebec Gazette. pp. 30).
3. *Reflections upon the Value of the British West India Colonies, and of the British North America Provinces.* London. 1826.

AMONG the curiosities of contemporary British legislation, must be reckoned Mr Hume's motion in the House of Commons, in presenting Mr Gourlay's petition, on the plan of extinguishing the national debt of Great Britain, by the sale of the crown lands in the two Canadas. It must be admitted to show a somewhat limited knowledge of the matter in the honorable mover (if not misreported), that nothing was said by him, on that occasion, of the measures long ago adopted by the British government, with a view to the deriving of benefit from the waste lands in question, as well to the colony as to the mother country, or, at least, to the creating by their sale the means of defraying the expenses of the provincial government. It appears from the document which is mentioned at the

head of this article, that this subject engaged the attention of the British government so early as the year 1775, or twelve years after the conquest of Canada. By the instructions given to Sir Guy Carleton (afterwards Lord Dorchester), dated St James, February 3, 1775, that captain-general and governor in chief was empowered 'to agree with the inhabitants of the province for such lands, tenements, and hereditaments, as now are or hereafter may be in the king's power to dispose of, to be granted in fief or *seigneurie*, in like manner, as was practised antecedent to the conquest of the said province, omitting however, in any grant that shall be passed of such lands, the renovation of all judicial powers or privileges whatever.'

Three years after the recognition of the independence of the United States, Lord Dorchester was, by additional instructions, directed to order the surveyor-general to measure and lay out such quantity of land, as, with the advice of the Council, he should deem convenient for the settlement of the *loyalists*, 'such lands to be divided into distinct *seigneuries* or fiefs, to extend from two to four leagues in front and from three to five leagues in depth, if situated upon a navigable river, otherwise to be run square, or in such shape and in such quantities, as shall be convenient and practicable, and in each *seigneurie*, a glebe to be reserved and laid out in the most convenient spot, to contain not less than three hundred acres, nor more than five hundred acres, the property of which *seigneuries* shall be and remain vested in us, our heirs, and successors; the said lands to be held under us, our heirs, and successors, *seigneurs* of the *seigneurie* or fief, in which the same shall be situated, upon the same terms, acknowledgments, and services, as lands are held in the said province, under the respective *seigneurs*, holding and possessing *seigneuries* or fiefs therein, and reserving to us, our heirs, and successors, from and after the expiration of ten years from the admission of the respective tenants, a quit rent of one half-penny per acre.'

The loyalists and those whom these provisions concerned, are defined in the following passage at the beginning of the fortieth section of Lord Dorchester's instructions; 'our loyal subjects, inhabitants of the colonies and provinces, now the United States of America, who are desirous of retaining their allegiance to us, and of living in our dominions—and the non-commissioned officers and private men of the forces, which may have been reduced in our said province of [Quebec], and who shall be desirous of becoming settlers therein.'

The Canadians were greatly displeased and not a little alarmed at the great number of loyalists that entered the province, allured by the bait which had been thus held out to them or coming in the character of officers of government. 'From the manner,' says a committee of the House of Assembly, in a Report dated February 12, 1821; 'from the manner in which the influence of these gentlemen and their friends had been exercised in the old colonies, and from the ill success which had attended the policy adopted by their advice, Canada could augur but unfavorably of the administration which was destined to rule it.' It seems that several petitions were addressed to the king complaining against what the Canadians considered an infraction of the laws, institutions, and privileges guaranteed to them by the Quebec Act of 14 George III. ch. 83. This law however does in no manner deprive the crown of the right of distributing the waste lands; the Canadians were only intended to be secured by it in the 'enjoyment of their property and possessions, together with all customs and usages relative thereto, and all their civil rights.'

It appears from a proposition brought forward in 1790, on behalf of Lord Dorchester, and discussed in the Legislative Council, that a strong party inclined to the commutation of the feudal tenures into estates of free and common soccage. The governor in asking the advice of the council, on this subject, invited them to attend to the statute 12 Charles II. chap. 24, by which the tenure in free and common soccage was made general in England.

The chief justice who, was then, we believe, as now, chairman of the council, made a similar motion which was received favorably by the council. Only one member entered his dissent; but at last, the government discountenanced the whole scheme; and though, by the forty-third section of the constitutional act (31 George III. ch. 31), all lands in future to be granted within the limits of Upper Canada, were to be granted in free and common soccage, the same enactment was extended to Lower Canada only in case the grantee should have desired it, remaining however 'subject to such alterations, with respect to the nature and consequences of such tenure of free and common soccage, as may be established, or any law or laws, which may be made by the king, his heirs,' &c.

In 1821, the question was brought before the House of Assembly, in consequence of the speech of the governor in

chief, at the opening of the session, and a committee to whom the matter was referred, reported against the suggested change. The principal ground upon which they placed their opposition was, that the feudal system was better adapted to the settlement of a new country, where capital is necessarily scarce, where labor wants the encouragement of constant outlets for its surplus productions, and where the returns of money, laid out in the clearing of land, are slow. They thought that these obstacles could only be removed, by one of the three following expedients; that the country should be settled by emigrants, furnished with capital and accompanied by free laborers, as was the case in the settlement of New England; or, that the government should make pecuniary advances or donations to support the new settlers, till their labor should become productive, as was the case in 1783 and 1784, with the settlers in Upper Canada; or, lastly, that the government should make the grants under conditions which might insure the investment of private capital, with reference to individual interest, but so as to insure the permanence of the settlement. The committee was disposed to adopt the latter course. They thought that such a policy would not only encourage the investment of the pecuniary resources already existing in the province, but produce an influx of capital from abroad.

Considering, however, the interest of those through whom the capitalists must derive their profits, the committee supposed that concessions, such as had been made to the great proprietors of some of the provinces now constituting the United States (as, for example, Lord Baltimore), would be too onerous for those who should actually become settlers. They concluded that, in regard to the interest of the latter, the French system of *seigneuries* was unquestionably the least burthensome, especially as, since the conquest, the inconveniences of the seigniorial jurisdiction, in civil and criminal cases, had been removed. Under that system, the settler is not obliged to lay out any money for his land, and consequently the idle cash he may possess may be employed in the improvement of his farm. The annual rent is generally moderate. In return, the tenant has the support of the *seigneur*, who is interested to save his estates from the forfeiture to which he would be liable, were his lands to remain uncultivated. In many cases, he is obliged to provide for the means of intercourse from the remotest settlement on his estate, to the next concession of ungranted land, and to

construct mills at which the grinding is fixed by law at a moderate rate. 'The religious and social habits of the Canadian agriculturist' add the committee, 'prevent him from emigrating to the township. He is there deprived of all the substantial comforts of his religion. His child cannot be baptized nor receive instruction in the principles of his religion; on the verge of the tomb, he can receive no religious consolation. He has no means of attending Divine worship.' No new settlement however small can long be without a chapel and a priest, but this can only be effected, in the opinion of the committee, by the erection of seignorial settlements. The population, say they, is adequate to the settlement of the waste lands; and in concluding their Report, they express the opinion, that the principal obstacle which had existed in that respect, has been the carelessness of the colonial administration, in executing the king's 'wise and gracious instructions.'

The committee observe cursorily that by the statute 12 Charles II. chap. 24, the feudal constitution is only modified, and not abrogated, even in England.

Without pretending to follow in the track of Craig and Ferriere or the other writers on the feudal law, or to attempt to throw any new historical light on questions which have been discussed and elucidated in so masterly a strain by Montesquieu, Robertson, and Hallam, we shall now endeavor to explain how far the feudal tenures have been introduced into Canada.

The feudal system has been sufficiently discredited, and its inconveniences are universally known; but still we believe that many prejudices exist in respect to this system, as well as in respect to all institutions which are antiquated or in contradiction with the spirit of the age. In order to do justice to the ancient government of France, we must consider the modifications which had been applied to that system, long before it was demolished by the *fiat* of the revolutionary reformers. To be equitable to the governments which still maintain it, it would be requisite to show that it may be made consistent, to a certain degree, with modern principles, and that the feudal polity now existing, for instance in Spain and some parts of Italy, is not as we find it portrayed in ancient codes and legal disquisitions, or in philosophical denunciations against the wisdom of remote ages. But, if such an exposition is too remote from the subject which we are now en-

gaged in examining, and too complicated for a rapid and general view, we may at least, advert to some of the most essential differences between the actual feudal system of Canada, and that which once existed in the greatest part of Europe, and subjoin a few remarks founded on the facts brought together in the documents, to which we have asked the reader's attention, at the head of the article.

We may set it down as an incontrovertible position, that conquest was the origin and the basis of the feudal system. The lands conquered were generally divided between the conqueror and the original proprietor. Now, Canada, was, originally, not a conquered province. The settlement of that country, though less spontaneous, and less exclusively *economical* than that of almost all the states, now composing the North American Union, was, nevertheless, in point of law, more like such a peaceful occupancy, than an acquisition by military force. England had a better title to the right of conqueror in 1763, than the first French monarch, who introduced into New France the system to which we allude.* Yet as this system existed in the mother country, without being checked either by public opinion or by any legitimate power, and formed, on the contrary, the ground work of the whole political fabric in that kingdom, no objection could be urged, nor was probably urged against its introduction into the colony. It is the prevailing belief in Canada, at the present time, as we have already shown on the authority of one branch of the legislative body, that such a vast country could not in the beginning be settled, otherwise than by means of a partition of lands, among great feudatory landholders, since the first elements of its population were essentially different from those of the neighboring English colonies. The large quantities of land granted to a few individuals, were like a monopoly conceded to the promoters of a new branch of industry. Political economists admit, that manufactures, and commerce with distant countries which have long been inaccessible, may be encouraged by temporary privileges, without violating the most liberal principles towards strangers.

* Lord Grenville made in the course of the important Parliamentary debates, to which we shall repeatedly have occasion to refer, a distinction between a *colony originally conquered*, to which the laws of Great Britain might be transported, and a *province conquered from another nation*, and already possessing settled laws, agriculture, and an extensive commerce. *Parl. Hist.* vol. xxix. p. 656.

The colonies were generally not considered in any other point of view than as outlets of national capital and national industry. France may therefore plead, that the feudal system was nothing but a monopoly; but on the other hand it might be objected—and the objection is irresistible—that agriculture and all the interests connected with it, are more steady, less moveable, and less independent of the general system of a country, than the other branches of industry; and that exclusive favors, once granted to any set of men in respect to landed property must have an irretrievably prejudicial influence on the destiny of the whole population.

The principal modification with which the feudal system was introduced into Canada, was the exemption from military services.

Under the French government, the seigniors exercised a territorial jurisdiction, though jurisdiction is not absolutely connected with the feudal tenure. In the earliest grants, mention is made of local judges, from whom appeals lay to the *prevôt* or *bailli* at Quebec, and of superior, mesne, and inferior jurisdiction. But the territorial jurisdiction is now abrogated.

The tenures are divided into noble and *roturier*. ‘We have no English word,’ says Hallam,* ‘that conveys the full sense of *roturier*. How glorious is this deficiency in our political language, and how different are the ideas suggested by Commoner!’ But Mr Hallam forgot that there were such ‘*ruptuarii*,’ as Du Cange calls them, under the laws of Great Britain, in Canada.

The noble proprietors (who, as we shall hereafter show, need not be patricians themselves) owe to the king the same rights as the mediate tenants owe to them.

The *roturier* tenures are, according to Ferriere, ‘inheritances held on *censives* and owe but two principal servitudes, the annual *cens* and the “*lods and ventes*,” which are due from the new proprietor to the *seignior censier*, in virtue of sale or other conveyance, equivalent to a sale;’ and with respect to fines, they are subject to those for non-payment of the *cens*, or for failure of notifying the sale; the first is of $3\frac{1}{3}$ pence, the second of $37\frac{1}{2}$ pence.†

* State of Europe during the Middle Ages, vol. i. p. 207. London 3d. ed.

† British sterling.

In case of collateral succession the heir is bound to pay a year's revenue of the fief, or a sum fixed by arbitration or by offer of the heir, at the option of the lord.

'Fealty and homage' are probably now mere fictitious formalities. However in a work entitled an 'Abstract of those Parts of the Custom of the Viscounty and Provostship of Paris,* which were received and practised, in the Province of Quebec in the Time of the French Government,'† it is said: 'Fealty and homage constitute the fief and give it its name.' (Tit. II. of the Introduction.)

We find‡ that the *cens* amounted, under the French government, to fifteen eightieths of a penny for every acre in front, by the whole depth of the grant; which varies from twenty to one hundred and twenty-six *arpents*.

The rents were stipulated between the lord and the tenant; before the conquest, the highest amounted in cash to one penny and a ninth for each superficial acre, and when payable in money and in wheat, to five ninths of a penny for each superficial acre, and a bushel of wheat for forty superficial acres.

The *censitaires* are, besides, subject to the '*lods* and *ventes*,' or the twelfth part of the purchase money, though the lords generally remit a fourth of it; and to the livery of seisin, which amounts to two thirds of a penny. According to the 'Custom of Paris,' the formality of seisin is not strictly obligatory.

In regard to fines, they can only be exacted by means of a judicial sentence, and amount to $3\frac{1}{3}$ pence in case of refusal of paying the *cens* and *rentes*, and to $37\frac{1}{2}$ pence for default of giving notice of the sale.

* Mr Fox observed in the course of the debates on the Quebec Government Bill (House of Commons, May 11, 1791), that the French laws existing in Canada were not the laws of France, even at the time of the conquest of that Province. The whole French law was, indeed, never sent to the colony; but particular parts only. 'Whenever,' said he, 'an appeal from the French laws and the Custom of Paris came before the Privy Council of that kingdom, the great and able men, who composed it, were put into a difficult situation, and were obliged to inquire what the custom of Paris was, in such and such a case, and how the French laws operated under such and such circumstances; and in order to ascertain those points, they were obliged to inquire of antiquaries rather than of lawyers, before the Code Marchand could be established.' *Parl. Hist.* vol. xxix. p. 406.

† London, printed by the King's Printers. 1 vol. folio. 1772, (in French.)

‡ Report of the Committee, &c. p. 71.

The last feudal burthen is the obligation to bring the grain to the lord's mill, paying the fourteenth part for the grinding : to make or permit to be made all roads and bridges requisite for general intercourse (*corvée*), and to clear the lands and occupy them within a year and a day from the date of the deed.

These burthens being definite in their nature, it has been argued that they are analogous to soccage services. 'In France,' says Hallam,* 'all lands, held in *roture*, appear to be considered as villein tenements, and are so termed in Latin, *though many of them rather answer to our soccage freeholds.*' The commutation of the actual feudal tenures into free and common soccage would consequently not meliorate essentially the condition of the tenants.

The most important restriction upon the right of the seignors, is that every inhabitant can insist on a grant of land, for the purpose of improvement, subject to rent and dues, whereby the grantee becomes a perpetual proprietor, without paying any purchase money, or other expenses than the notary's fee for acknowledging the deed. Again, the seignors cannot sell any portion of their landed estates, under penalty of having them forfeited to the crown and voiding the deed of sale.

These two last conditions are striking and distinctive features in the feudal system of Canada. They deserve a few words of explanation.

When the French government, about the first quarter of the seventeenth century, entrusted the administration of the Canadas to a company, the principal object and condition of the grant was to improve the country as rapidly as possible. That company distributed large tracts of land to several individuals, but always subject to the obligation of carving out from their estates suitable portions for all those, who should offer to cultivate and improve the land. By a grant made in January, 1636, of the fief of *La Côte de Lauzon*, it seems, besides, that the company was bound to send settlers to Canada ; for it is said that the number of those, whom the grantee and his heirs should send, would be deducted from the number which the company was obliged to furnish.

In March, 1663, the king resumed the rights surrendered to the company, and in the same month and the same year an *arrêt* was passed to remedy the inconveniences consequent

* Vol. i, p. 224.

upon bestowing large tracts of land upon persons who were never able to clear them, on account of their great extent, and to prescribe, that within a limited period all the lands should be cleared, or otherwise those which should remain uncleared, were to be distributed by new grants.

There is a grant dated October 11th, 1653, in favor of one Mr Perthins, of one league and a half in front by nine in length. Reservation is made of the king's right of constructing military and public works, and of felling all oak timber fit for the royal navy. Actual residence is enjoined to the grantee and his tenants, in order to cultivate the land, and in default thereof, the grant was to be void.

Another *arrêt*, dated July 6, 1711, imported that the uncleared lands should be reünited to the royal domain, and once more enjoined upon the lords to concede lands to such inhabitants as might be willing to take portions of them on rent.

A second *arrêt* of the same day required the grantees of lands on *roture* to reside upon and clear their lands, without further delay.

Some seignors having reserved to themselves extensive domains, and sold tracts of woodland, instead of conceding them merely for rents, a new term of two years was provided by government, within which the lands were to be cleared and settled, or otherwise they should be reünited to the royal domain; and all felling of wood was again prohibited, under the penalty of voiding the deeds of sale.

There are several ordinances reüniting lands to the crown domain, for default of actual settlement.

Judicial decisions, legislative acts, proclamations, and all the expedients which could be devised, were thus employed with the hope of promoting cultivation and the increase of population, and with a view of remedying the evils of the extensive grants, that had been lavished upon a few families. In fact, upon feudal principles, the settlement might have been enforced upon the fundamental condition, that *tenancy must always be full*, in order to do the lord's service.

It seems that, excepting occasional extortions of the principal officers within the colonies, and the heavy military services, which were exacted, the inhabitants had reason to be satisfied with the solicitude of the French government for the improvement of the country; and it is hinted, in one of the documents upon which we reason, that the British government has been

much less attentive to remedies required by the accumulation of extensive estates in a few hands.

Yet under the French government, the population increased very slowly and the improvement of the country was inconsiderable. Its territorial revenue consisted in *quints* (the fifth part of the purchase money) or alienation fines, and '*lods and ventes*.' But in reality the crown did not receive more than a third of the principal of these dues. Under the British government from 1775 to 1788, the territorial revenue, comprehending arrears, was below ten thousand pounds sterling.

It is stated in the Minutes of Evidence, that no seignories have been erected in Canada, from the time of the conquest, nor indeed since 1759, and that the number actually existing in the districts of Quebec, Montreal, and Three-Rivers, is two hundred and eighteen, amongst which are eighteen islands, comprehending in all twelve millions seven hundred thousand *arpents* of land.

With burthens comparatively so light and with the facility of obtaining lands without price, one would think that the country ought to be more settled than it is. Yet, even with the casual increase of settlers by means of emigration from Scotland, Ireland, and the United States, a large proportion of the seignories is still uncultivated. The committee from whose report we have borrowed the preceding details, have collected, it should seem, sufficient evidence to show that there is, in the province, an abundant population to settle the waste lands of the crown and the ungranted lands of the seignories; * that the want of facilities for internal intercourse, by means of roads and bridges, is one of the causes of the paucity of new settlements; that in the earliest times the settlement of the country was paralyzed by the great quantities of land which were, at once, offered to be granted and at last distributed to a small number of individuals; that the preference for settlements in townships originates from the religious spirit of the catholic inhabitants and their fears of a want of spiritual assistance and

* One of the members of the Council, who appeared before the Committee, said, that 'in no country where he had travelled, had he met with such a dense agricultural population as in Canada, except in French Flanders and Brabant.' (Minutes of Evidences, p. 15.) This may be true, in regard to the settlement of the banks of the rivers and on the principal lines of internal communication; but this *abundant* population would probably be found to dwindle into a scanty one, by an examination of some remoter portions of the province.

direction, in separate and isolated habitations, and from the judicial organization of the country ; that the mode of acquiring land, under the actual system, is less expensive than under any other ; that the fees for a soccage settlement are too heavy ; that generally the lands reserved to the crown and to the protestant clergy are so situate, as to be an impediment to the settlement of the French inhabitants ; that the *cens* of the feudal tenure is not burthensome ; that the rents are generally moderate ; that money is very scarce among the great mass of the population ; that, besides, in many districts the soil is poor and the climate excessively severe, and that in many others, which are in both respects better situated, the settler would be obliged to make considerable sacrifices of labor and money in draining the soil ; that in one part of the province, settlements are checked by the uncertainty of the exact limits in regard to the United States, and that in another district, the land titles are insecure.

It may be that the most powerful cause has not been mentioned by the committee ; to wit, the natural indolence of the French inhabitants, arising, perhaps, from a disregard to what we call comforts, from education and habits, and from their religious tenets. The state of society in Canada, it must not be forgotten, is a very primitive, we had almost said a patriarchal one. Wealth has not there the same attraction as, for instance, in the superlatively artificial society of England. When political moralists and economists lament the ‘*dolce far niente*’ of the Italians and the supineness of the Spaniards, and call them indolent, degenerate, &c. they ought not to forget that maccaroni and a cigar, a piece of bread with an onion, are as much relished by those sunny and light-hearted philosophers, as the most refined dainties for which the laborious gourmand toils in London and Paris, with the most marvellous talent of forgetting the fatigue and anxieties with which he purchases them. The catholic religion is essentially inimical to the lust of wealth. On a people of primitive character that cause acts very powerfully. The Venetians became merchants from the moment that they were prepared to say to the Pope, ‘*Primo siamo Veneziani e poi Cristiani.*’ Unless our personal observations have grossly deceived us, we may confidently say, that the Canadians are yet far from entertaining a similar notion.

The greater part of what we have said, in regard to the settlement of the seignorial lands, is applicable to the townships, which have been formed under crown concessions. As such grants have

been made by the provincial government, from the year 1796, in free and common soccage, it should seem that the number of settlements made under those conditions, might essentially aid in solving the question, whether the Canadians prefer the soccage to feudal tenures. But the first fact that strikes the reader of the Report of the Committee of the House of Assembly,* is that according to the public returns, from the year 1797 to February, 1821, no revenue has been raised by such sales. We cannot hope to give a more concise explanation of this remarkable circumstance, than is contained in the following passage of the Report of the Committee; and the complaints, which it contains, against some officers of the government might perhaps more properly come from the competent local legislative authority, than from an American Reviewer.

‘Your Committee,’ it is said in the eighth and ninth pages, ‘have ascertained beyond a doubt, that these instructions were evaded in the following manner.

‘An entire township, or half, or a quarter of a township, was, upon the application of an individual, who had the fortune to enjoy the favor of the colonial administration, promised to him. He obtained the names of thirty-nine individuals, who either lent them gratuitously, or sold the use of them, for some trifling consideration, or were to receive nominally a grant of twelve hundred acres of land, really and truly a grant of two hundred only. In each of these three cases, a bond or obligation was executed, whereby the real grantee of the township, known by the name of “*leader*,” stipulated with these “*personnes interposées*,” that upon the passing of the patent, these several associates should convey to the *leader*, either the entire twelve hundred in the two first cases, or the one thousand in the last case, in fee simple to the *leader*, the latter engaging to use the necessary exertions, and incur the necessary expenses, and also to pay the patent fees upon the grant, without any reimbursement to him from the associates.

Under this system there was granted to the members of his Majesty’s council, above one hundred and thirty thousand acres; to friends and relatives of members of the executive council, above one hundred thousand acres; to individuals who had not joined the standard of his Majesty during the revolutionary war, above three hundred thousand acres. To American loyalists, and to his Majesty’s Canadian subjects, with the exception of the Canadian militia who served in the year 1776, none, or if there be some solitary exceptions, they are so few as not to merit consideration.

* Second Report, p. 8.

‘For these services, his Majesty directed, by a special mandamus, that there should be granted unto the Lieutenant Governor for the time being, an entire township of the waste lands of the crown, to each of the members of the executive council, one quarter of a township, which was accordingly carried into effect.’

The language of the committee is characteristically bold, and illustrates the mutual relations of the political departments and some of the principal officers of the government. ‘Your committee,’ they observe, ‘unwilling to believe, that the above mentioned evasions of his Majesty’s gracious instructions had been practised with the knowledge, privity, or consent of his Majesty’s servants, bound by their oath, their honor, and their duty to obey them, instituted a long and patient investigation into the origin of these abuses. They have been painfully, but irresistibly led to the conclusion, that they were fully within the knowledge of individuals in this country, who possessed and abused his Majesty’s confidence.’ The instructions given to Lord Dalhousie, relative to the waste lands of the crown, and which were communicated to the House of Assembly in February, 1823, have for their object to prevent the granting of large quantities of land to those who have no immediate occasion for cultivating and settling them. They direct the governor not to make grants to any person who has not previously made it appear, that he is in a condition to cultivate and to improve the land; that the lands to be granted shall be laid out in townships, so far as local circumstances will permit, each consisting of ten miles square.

In the Minutes of Evidence, there is again a short but conclusive solution of the question, why Canadians settle so rarely on lands granted in free and common soccage.

‘Q. To what cause do you attribute this?’ the committee asked Mr Bouchette, the surveyor-general and author of the *Topography of Canada*.

‘*Bouchette*. The reasons are obvious; they do not like the tenure, as they do not know it; they do not like to leave their relations and friends, and they like to be within the reach of their churches.’

Emigrants who might have been willing to settle in the townships, were often deterred from doing it, it seems, by the delay in the preparation of the several documents relative to the grants. The public duties of the council, by whom such grants are issued, are various. Some of its members are judges, who

are engaged in their judicial functions one hundred and forty days in the year, and a considerable part of that time is precisely the season most important for the emigrants to proceed upon their enterprises.

It appears from official papers, that in 1821, three hundred and seventy-six thousand two hundred acres had been granted to emigrants from the United States, as 'leaders' of settlements in townships.

The Fourth Report on Emigration is sufficiently important to this country to deserve a literal insertion in the present article.

'When, at the close of the long and sanguinary contest which had for more than twenty years agitated and desolated Europe, a new order of things arose in 1815, the United Kingdom, in common with the other nations of Europe, suffered greatly from the sudden transition from a war unexampled in the histories of mankind, to a state of peace; her government naturally looked to the North American colonies, as a refuge for her distressed subjects thrown out of employ. The landholders of England expected that by means of the emigration of the poor to the colonies, the increased pressure of the poor laws would be diminished. The poor themselves had a right to expect, from the vast and interminable waste lands of the crown in these colonies, a refuge and an honest independence; all classes might indulge a hope, that this would be one of the most powerful means to allay discontents and to restore tranquillity. How far these hopes have been realized in our sister colonies, it belongs not to your committee to inquire; their attention was necessarily confined to this province. Your committee find that there arrived at the port of Quebec, in the year 1817, 6796 settlers; in the year 1818, 8221; in the year 1819, 12907, and in the year 1820, 11239, making altogether 39163; that a great majority of these, intimidated by the length and rigor of the winter of this country, and unacquainted with the laws, institutions, and language thereof, have ascended the St Lawrence, and are now dispersed over the lands of Upper Canada and the United States, where they have found a more genial climate, their own language, and laws and institutions analogous to those to which they had been accustomed.

'Although the proportions are unknown to your committee, your committee have however ascertained that a very large number have gone into the United States, a very small number of the total number of emigrants have remained in this province, and this less from inclination than from accident, sickness, or want of pecuniary means to proceed further up into the interior. The only lands

within the disposition of the crown, upon which these individuals could have been located, were—

First. On the ungranted lands of the crown, within the townships on the southern and northern shore of the St Lawrence.

Secondly. On the ungranted lands of the crown situated in the rear of those townships, or in the rear of the old seignories of the country.

Thirdly. On the ungranted lands of the estates heretofore belonging to the late order of the Jesuits, and now administered by a commission.

As to the first, the large quantities of land held by private individuals, who have never settled or cultivated the same, and the want of roads of communication, rendered them inaccessible to these poor emigrants; and if these obstacles had not subsisted, the quantity tendered by the colonial administration being but one hundred acres, afforded no sufficient encouragement to induce the emigrants to encounter the privations and hardships incident to a new settlement in the wilderness.

The crown and clergy reserves, interspersed as they are amongst the other lots, offered another insuperable barrier.

To all these were superadded an exaction unwarranted, as your committee believes, by law, of fifteen shillings and six pence on the name of each petitioner inserted in any petition, before the same could be laid before the executive council, an exaction required as well from the emigrants as from his Majesty's Canadian subjects, to whom his Majesty was graciously pleased to order that grants of land should be made for their services during the late American war.

Under all these obstructions, your committee have reason to believe that of the above mentioned 39163 emigrants who arrived at the port of Quebec, during the years 1817, 1818, 1819, and 1820, *not more than one hundred families* have found a refuge and subsistence upon the waste and ungranted lands of the crown.

It appears to your committee, that the ungranted lands heretofore belonging to the late order of Jesuits, and now administered by a commission, from their proximity to actual settlements, and from various other causes, constituted the most advantageous situation for locating such of the emigrants as could not proceed to the Upper Province.

Those lands are under the administration of a board of commissioners, and their advantages in this respect were fully felt by a committee of gentlemen associated at Quebec for the purpose of affording relief to the distressed emigrants. And in the last autumn, an application was made to that honorable board, by the said committee, to forward these views; that application was not successful to the extent that might have been wished, but the

causes which led to its failure your committee do not deem it their province to explore.

As connected with the subject which has been referred to your committee, they think proper to observe that in the course of their inquiries, they have found that emigrants, arriving in the ports of this province, on their way to their intended places of settlement, are subjected to various oppressions on the part of masters of vessels, from the want of sufficient authority in the courts of law for their protection, and to give due effect to the statute to regulate the vessels carrying passengers from the United Kingdom to certain of his Majesty's Colonies in North America. Your committee therefore deem it necessary that a bill should be introduced, vesting jurisdiction in his Majesty's Court of King's Bench, in the several districts of this province, for the recovery of the penalties in the said statute contained; and further that to relieve the emigrants from the inconveniences to which they are not unfrequently subjected, by being conveyed to ports and places different and at a distance from the ports and places to which the masters had engaged to convey them, a heavy penalty should be imposed upon this offence; and further, to relieve them from the occasional exactions from the masters and the detention of their effects by the said masters, to carry into effect the said exactions, which your committee have reason to believe are not unfrequent, that a summary jurisdiction within limits as to amount, should be vested in one or more magistrates.

Upon the whole of this branch of the subject, your committee are of opinion that the manner in which the crown and clergy reserves are interspersed among the other lands, contributes greatly to retard the settlement of the country, and that from the errors and vices of the system of granting the waste lands of the crown, which has hitherto obtained within the colony, not only has the settlement of those lands and the advancement and prosperity of the country been retarded, but also that relief to the distressed emigrants withheld, which it must have been the desire of his majesty's ministers to afford. All which, nevertheless, is humbly submitted.'

We have yet to speak of an important obstacle to the settlement of Lower Canada, alluded to in the foregoing report, and having a direct bearing on the relations of its French inhabitants with Great Britain. This arises from the lands reserved by the crown for the Protestant clergy. The right of the mother country to make such a reservation cannot be contested. It was contemporaneous with the constitutional act of

Canada, and stands, therefore, linked with the whole political system of the province. It was founded on expediency, and rendered indispensable by the religious and civil privileges of the Catholic clergy. That clergy possesses vast territorial domains. They are closely united by the ties of common origin, language, and old habits with the great mass of the population. They enjoy probably a greater influence over the minds of the people than the Catholic clergy exercise in any other country. It would therefore have been an inexcusable disregard of its own obvious interests, nay, of its security, had the mother country not provided for the clergy of its own established church. Yet such considerations and arguments have little weight with the common Canadian. He sees that the leases of the lots assigned to the Protestant clergy, are more burthensome than the feudal tenures; under these, at all events, he becomes a proprietor, while under the former system, the farmer, after many years of labor, does not become the owner of a single acre of the land he has so long cultivated.

Mr Pitt stated in the introductory debate on the Quebec Government Bill, that the appropriation for the Protestant clergy was meant to be permanent, and susceptible of increase in proportion to the progress of the population and the cultivation of the two provinces, which that bill embraced. He remarked, that in order to restrain the grants which might be made to the Protestant clergy, in Upper Canada, and to the Catholic church, in the province where the majority of the inhabitants were Catholics, it was provided that it should not be lawful for the king, in future, to assent to grants which might be made to either church, under the authority of the legislature of either of the two provinces, without having previously submitted such measure to the consideration of the British Parliament.*

A spirit of opposition has arisen among the clergy of the church of England, in Canada, against a scheme tending to extend to the Presbyterians the benefit of the clause of the government act for the reservation of lands for the Protestant clergy. A pamphlet on that subject appeared, four or five years ago, in London, entitled, *Letter to the Earl of Liverpool on the State of the Colonies, by a Member of Parliament*. It seems that the crown lawyers had expressed their opinion that the statute 31 George III. ch. 31. was applicable to the Pres-

* Parl. Hist. vol. xxviii. p. 1378.

byterian ministers. The author argues to the contrary, from the sections 37-40, that the church of Scotland was never intended to be put on the footing of the English reformed church. No express clause, indeed, is inserted, either in favor or against the dissenters, of any denomination. A *Protestant clergy* may be considered as a collective denomination in contradistinction to the Catholic clergy, which is, on account of the number of Catholic inhabitants, the principal ecclesiastical body in Lower Canada. In the session of parliament, April 8th, 1791, when the Quebec Government Bill was, for the first time, brought into discussion, Mr. Fox opposed the clause concerning the reservation of lands for the Protestant clergy, but seemed to suppose, that at any rate it would embrace all descriptions of Protestants.* But Mr Pitt expressly said at the close of the debate on the bill, in the House of Commons, on the 12th of May, that the meaning of the act was to endow the *Protestant clergy of the established church*. This was done, said he, to encourage the established church, and possibly it might be proposed to send a bishop of that church to be a member of the Council.†

The author of the pamphlet asks ; ‘When in 1793, the late

* Parl. Hist. vol. xxix. p. 107.

† Ibid. 429. The little work which stands third at the head of this paper, contains, in a short passage, much exact information about the income of the Catholic clergy ; and we transcribe it the more readily as the book has not yet been noticed in this country.

‘Lower Canada contains a population of nearly half a million of souls and affords a militia of 76,000 able-bodied men, accustomed to the use of arms. They are a moral, industrious, sober, and contented people attached to their own customs, laws, language, and religion. They are Roman Catholics, but as their clergy are educated in Canada, and *have no connexion with the Pope* or with any foreign power, all political objections to that religion are, in the case of Lower Canada, removed. The church is not paid by the government, as was erroneously stated in parliament, but has the 26th part of the grain raised on the lands of the Catholics. This claim the law acknowledges, but this is all the favor shown to the Catholic religion. If a Catholic sells his lands to a Protestant, or if he thinks proper to become a Protestant himself, his estate is no longer liable to this very humble tithe. Hay and potatoes are exempted from the charge. The church is governed by a bishop (a native Canadian,) who receives, in addition to the rent of some lands of no great value, one thousand per annum from the civil list of Great Britain. This annual thousand pounds is all the catholic church establishment of Canada costs the

king erected the Canadas into a bishop's see, according to the laws of the church of England, lawfully made and received in England, was it the king's intention that the bishop and his clergy should become the stewards for the property of dissenters?' An innuendo is thrown out against the present governor, as being partial to the church of his native country, and allusion is made, in still clearer terms, 'to a stirring and aspiring Presbyterian minister [who] has been sent out to Quebec from Scotland. If the church of England,' adds the author, 'already somewhat moved from her foundation by the continual encroachments of the church of Rome, is to be elbowed in her seat, by the new raised ambition of the Presbyterian church, it is impossible she can maintain any true character of preëminence or permanent ground of establishment; and will this touch neither the principle nor the interests of the crown?'

We have alluded to this pamphlet, as much because it brings into notice an important discussion (no ecclesiastical question is unimportant), as because it shows how indispensable it is to look somewhat deeply into the connexion of the landed interest with the general polity and the views of the government of the country. No lawyer will need much argument to be persuaded, that political institutions can never be rightly understood, unless the rules of property which prevail in the country, are exactly known. Those of Canada have a peculiar interest to American statesmen. The crown lands in that province are in some degree analogous to the public lands of the United States. No other country, we believe, has fiscal lands; most of the sovereigns of Europe have lost or given up their demesne estates. The manner in which the waste lands are disposed of in Canada is, we think, not so generally known in the United States, as to render it superfluous to invite public attention to that subject. Besides, many erroneous views may arise from the misapplication of terms, which have by long use, by etymology, and the sanction of great publicists, a determinate signification. Now, the feudal phraseology and terms, used in Canada, are far from really expressing the

mother country. The 26th part of the grain from the Catholic lands is found to be an ample allowance. The income of the *Curés* averages £300 per annum, which affords them, in a cheap country, the means of living most respectably and of even exercising a very liberal hospitality.'

things and relations which they were elsewhere appropriated to represent. *Fief, franc-allen, feudal tenure, fealty and homage*, have not amongst our neighbors the signification they had originally throughout Europe. Without recommending that system as a model of polity, for the promotion of the general weal, one may well hesitate before he condemns it on no other ground than the effects which institutions, distinguished by the same names, have produced elsewhere.

The existence of a class of great land proprietors to whom the bulk of the population is tributary upon feudatory conditions, and who, nevertheless, enjoy no privilege of nobility as individuals, nor form a real aristocratic body in their collective capacity, is a remarkable anomaly in government. Under the French dominion several of the *seigneurs* were nobles by birth, but not on account of their tenures. A few of these families still exist in Canada but are mixed with the rest of the landholders, and destitute of all peculiar distinctions and prerogatives. Indeed, this is but strictly conformable to the feudal law of France. 'Although every fief is reputed noble, it does not confer nobility on the possessor, for whatever length of time he may have possessed it.' *

The sixth section of the statute 31 George III. ch. 31. commonly called the Quebec Government Act, provides † that his Majesty may annex to hereditary titles of honor, rank, or

* Title II. Introduction of the '*Abstract of those Parts of the Custom of the Viscounty and Provostship of Paris, which were received in the Province of Quebec.* London, 1772.' p. 7.

† 'VI. And be it further enacted by the authority aforesaid, that whenever his Majesty, his heirs or successors, shall think proper to confer upon any subject of the crown of Great Britain, by letters patent under the great seal of either of the said provinces, any hereditary title of honor, rank, or dignity of such province, descendible according to any course of descent limited in such letters patent, it shall and may be lawful for his Majesty, his heirs or successors, to annex thereto, by the said letters patent, if his Majesty, his heirs or successors, shall so think fit, an hereditary right of being summoned to the legislative council of such province, descendible according to the course of descent so limited with respect to such title, rank, or dignity; and that every person on whom such right shall be so conferred, or to whom such right shall severally so descend, shall thereupon be entitled to demand from the governor, lieutenant governor, or person administering the government of such province, his writ of summons to such legislative council, at any time after he shall have attained the age of twenty-one years, subject nevertheless to the provisions herein after contained.'

dignity, the hereditary right of being summoned to the legislative council, although the following four sections provide for the forfeiture of these descendible rights. Nothing has been done to carry into effect the sixth section. Such a measure would indeed be attended with important and lasting consequences. It is probable that a scheme of a similar nature may have occurred more than once, to the British ministry, in regard to the United States in their colonial condition. But their circumstances were different from those of Canada. No great land-holders existed in this country by grant of the crown, except the proprietors. No feudal tenure was known, and few were the families, who had connexions with the aristocracy of the mother country. Mr Fox, in the course of the debates on the Quebec act, was against the hereditary honors, which were to be conferred in future times by the bill on the member of the council. 'Those honors might be very proper,' said he,* 'and of great utility in countries where they had existed by long custom ; but in his opinion, they were not fit to be introduced, where they had no original existence ; where there was no particular reason for introducing them, arising from the nature of the country, its extent, its state of improvement, or its peculiar customs ; where instead of attracting respect, they may excite envy ; and as but few could enjoy them, those who did not, might be induced to form an unfavorable comparison between their own situation and that of their neighbors [the United States] among whom no such distinctions were known.'

On the 11th of May, when the clauses of the bill were discussed, Mr Fox declared in the most expressive terms, that a sort of aristocracy ought to be introduced into the new political system of Canada. He considered it as an indispensable element of a mixed government, existing under a free constitution. The question with him was only on what principles it was to be founded ; whether on property, birth, or talents. Property, he said, was the true foundation of aristocracy. But he thought it, above all, desirable that that branch of political power should be rendered independent of the executive government ; that if property was to be the basis of it, persons of property alone should be chosen. But at such distance from the mother country, how could the crown ascertain the persons

* Parl. Hist. vol. xxix. p. 111.

who would unite with that requisite, the talents necessary for so eminent a station ? The mode he proposed was to render the aristocracy of Canada elective, but on other principles or on a higher standard than the other elective branch of the legislature, and their electors should also possess higher qualifications, than those of the members of the lower house. Should this idea not meet the approbation of the house, he would vote for a council, wholly nominated by the king or wholly composed of hereditary members ; a council chosen in any manner, he confessed, was better than none. The governor should not be left to act alone with a pure popular legislature. Yet, while he wished hereditary counsellors and a political aristocracy, he ridiculed the idea of *creating* a Canadian nobility. The *seigneurs*, he remarked, were in fact a sort of nobility. But, he declared them to be utterly unfit, as they were not respected enough, to be made hereditary nobles ; ‘ *and yet would ministers, he asked, pass by that nobility, and create a set of people over them, whom the world called nobility, and invest them with hereditary honors ? By the bye, he added, the sort of titles meant to be given, were not named in the bill ; he presumed the reason was, that they could not be named without provoking laughter.*’ *

If the authenticity of the reported speeches may warrant such a remark, and if it were consistent with the respect due to a man like Fox, we should be free to confess, that we find it difficult to reconcile these opinions with those which are recorded in his previous speeches on the same question, or to understand what sort of aristocracy he really wished should be infused into the government of Canada. When Mr Wilberforce asked him, whether the elective council was to be for life or for a term of years, he replied ‘ *that he had not decided upon that point*, but was rather inclined to constitute them for life.’ † Much of what he said in the session of the 11th of May was obviously intended to obliterate the impressions, which he might fear had been produced by some vague or ill considered remarks, that had fallen from him and had been referred, by his political adversaries, to the British constitution. According to the private history of the time, Mr Fox had shortly before entertained hopes of getting into power ;—

* Parl. Hist. vol. xxix. p. 414. † Ibid. p. 427.

the king had spoken favorably of him, and in such a juncture he was particularly desirous to avoid any discussion, that might lead him to explain his principles and opinions in regard to the late events in revolutionary France. He was drawn, however, into the debate, by Mr Burke, either at the instigation of Mr Pitt (as he himself suspected), or because the former had made up his mind not to delay any longer an attack on the spirit and principles of the Revolution.

Mr Pitt said, that there existed elements of a future nobility in Canada, but that meanwhile there should be an hereditary one. He considered the absence of such a counterpoise in the constitution as one of the causes which accelerated the separation of the other British colonies. The aristocratic power, which was to exist in Canada, ought not to be founded on property alone. In founding it exclusively on that basis, it would be almost elective and too popular ; while it ought, on the contrary, to be made in a great degree immediately derivative from the crown, after the model of the British aristocracy.

In his reply to Mr Burke, Mr Fox repeated that nobility could not be ingrafted upon the existing society in Canada.*

A question arose upon the constitutional legality of the division of Canada into two provinces ; but upon consulting the 14 George III., it appeared that the king had authority to propose that measure.† Mr Fox however was against it.

‘ It had been argued,’ said he, ‘ that by such means, we could separate the English and the French inhabitants of the province, that we could distinguish, who were originally French from those of English origin. But was this to be desired ? Was it not rather to be

* Parl. Hist. vol. xxix. p. 402.

† The following passage, transcribed from a letter of Gibbon, to J. Holroyd, dated October 14th, 1775, (4th ed. vol. i. p. 495,) is a curious statement of what the author thought of the public opinion and party feelings in Canada, at that time.

‘ We are not quite easy about Canada ; and even if it should be safe from an attack, we cannot flatter ourselves with the expectation of bringing down that martial people of the back settlements. The priests are ours ; the gentlemen very prudently wait the event, and are disposed to join the stronger party ; but the same lawless spirit and impatience of government, which have infected our colonies, are gone forth among the Canadian peasants, over whom, since the conquest, the *noblesse* has lost much of their ancient influence.’

avoided ? Was it agreeable to general political expediency ? The most desirable circumstance was that the French and English inhabitants of Canada should unite and coalesce, as if it were in one body, and that the different origin of the people might be obliterated for ever. If this had been the object in view, the English laws might soon have prevailed universally throughout Canada, not from force but from choice and conviction of their superiority. He had no doubt that on a fair trial they would be found free from all objection. The inhabitants of Canada had not the laws of France. The commercial code was never established there ; they stood upon the exceedingly inconvenient Custom of Paris. He wished the people of that country to adopt the English laws from choice and not from force ; and he did not think the division of the province the most likely means to bring about this desirable end.'

The reply of Mr Pitt is all-important, even at this distance of time. We transcribe it therefore almost literally from the Parliamentary History.*

'He agreed with the right honorable gentleman, in thinking it extremely desirable that the inhabitants of Canada should be united, and led universally to prefer the English constitution and the English laws. A division of the province, he considered to be the most likely means to effect this purpose, since by so doing the French subjects would be sensible, that the British government had no intention of forcing the English laws upon them, and therefore they would, with more facility, look at the operation and effect of their own laws, and probably in time be induced to adopt those of England from conviction. This he thought was more likely to be the case, than if the British government were, all at once, to subject the entire population to the constitution and laws of this country [England.] Experience would teach them, that the English laws were best ; and he admitted that they ought to be governed to their satisfaction. If the province had not been divided, there would have been but one assembly ; and there being two parties, if those parties had been equal, or nearly equal, in the assembly, it would have been the source of perpetual faction. If one of the parties had been much stronger than the other, that other might justly have complained that they were oppressed.'

We now proceed to give a summary account of the second publication mentioned at the head of our article. It is a free exposition of the different interests and claims that have been successively brought before the provincial parliament, and have

* Vol. xxix. p. 113.

not yet been decided or settled to the satisfaction of the colonists.

The assembly have, from the year 1807 down to the present time, made several attempts to obtain the right of appointing an agent to reside in London and watch over the interests of the province, as circumstances might require, and the provincial government might direct. But until the year 1825, the council refused their assent to the bills, intended to give effect to this measure. All the other colonies have, it seems, similar confidential agents in the mother country. The house of assembly, or at least the party in whose name the writer of the pamphlet presumes to speak, thought that the union of the two Canadas would never have been seriously proposed, had the ministers been enabled to confer on that subject with a deputy of Lower Canada. Though the measure has not as yet been carried into execution, the mere rumor of its probable adoption, has excited apprehension and uneasiness. Thus also the British parliament has inadvertently (the author says) passed one or two acts, which more properly belonged to the jurisdiction of the provincial legislature.

The next complaint is, that the powers of the council as a court of justice, are yet uncertain, and consequently that the officers of the government cannot be effectually subjected to the control of the legislature, by means of impeachment.

Again, the representation in the house of assembly is thought inadequate to the population, and unequal. In some counties, fifteen hundred land proprietors send as many representatives as six thousand elsewhere. Thirty thousand inhabitants, living in townships, have no delegates at all.

The lands formerly belonging to the Jesuits, and indeed, the entire property taken from that society, which, whilst it existed, was useful in disseminating elementary knowledge, and in supporting the college of Quebec, are now claimed, in order to be appropriated to the same object. These estates had been granted to lord Amherst, after the conquest; but from the dubious nature of the title, he preferred accepting an annual pension; and at the decease of the last Jesuit that remained in Canada, they were taken possession of in the name of the king, and continue to be administered on his account, without any provision having been made for the object (public instruction), to which their income was originally consecrated. A bill for the establishment of parochial schools, liberal in its

provisions towards all religious sects, repeatedly passed the lower house, from 1817 to 1823, but was constantly rejected by the council. Each school was to receive annually eight hundred dollars. In 1824, the bill underwent some amendments in the other branch of the legislature. The house concurred, and by this act, instead of a general admission, Catholics alone were to be educated in the parochial schools ; and these schools instead of pecuniary assistance, were to receive from the respective parishes, lots of land for buildings, and to be maintained by voluntary contributions to a certain amount.

A board for the direction of public schools was created in 1820, in conformity to an act passed in 1801. The members were twenty-four in number, and with the exception of three or four, were Episcopalians ; and to that communion belonged also the principal officers of the body, although there are ninety-nine Catholics in the province for one of the latter persuasion. The author seems well inclined to put all the religious sects on the same footing, in regard to the enjoyment of public instruction.

A bill has also been proposed for the exclusion from the legislature of every member who should accept an office under the government, though with the right of being afterwards re-elected.

The judicial organization of the country is the next point to which the author refers.

‘ During the last sixty-five years, says he, ‘ this province has had four different judicial systems. During the first five years, it was under martial law. During the next ten years we had the laws of England, courts organized upon the British system, and rules and forms of proceeding borrowed from that country. Afterwards, for a period of eight years, we had a mixture of British, French, and provincial legislation, motley courts, and rules of pleading partly according to both the English and French system, and in part agreeably to provincial ordinances. For thirty-two years we continued to have a mixed code, and courts of judicature existing under an act of the provincial parliament and the several amendments successively added to it. During that whole period (of sixty-five years) the benefits of the administration of justice, civil as well as criminal, have been almost entirely withheld from the agricultural districts, where the mass of the inhabitants reside.’

In 1824, the house of assembly impeached the judges, on account of irregularities in the mode of proceeding ; and in the following year, both branches of the legislature passed resolutions, importing that the judicial organization, was inadequate

to its purposes, and an address to the prince regent was voted. Several fruitless attempts have since been made to reorganize the courts. In 1825, a bill passed the house, providing for the administration of justice in the rural districts. The number of judges was to be increased to twelve. Amendments were made in the council, but at last the parliament adjourned, without having come to any definite result. The judges complain of the weight of business, of the insufficiency of the court of appeals (which is composed of the council and the judges of Quebec and Montreal, excluding those who have presided in the courts below), and of a want of uniformity in the judicial decisions. Lawyers and parties complain of a loss of time and of excessive expense.

The author proceeds to inculcate the necessity of an independent judiciary. In Lower Canada, the judges hold their offices during pleasure, as in England before the revolution of 1688. Yet the influence of the executive government over them seems to be checked, by some provisions which the author does not specify. But as the judges exercise executive, legislative, and judicial powers, there is the more reason, that their commissions should be *quamdiu se bene gesserint*.

Lord Grenville, who was then secretary of the foreign department, said in the House of Lords, in the course of the debate on the 30th of May, 1791, in answer to an objection stated to the bill for the settlement of the government of the two Canadas, on account of the judges not being made independent, that

‘ This was certainly a circumstance of great importance, and a most desirable object ; but from the *present* uncertain state of the law in Canada, he thought that the appointing judges in the way in which they were appointed in Great Britain, would be attended with much more evil than good. In this country [England], no danger could possibly be apprehended from appointing a judge for life, because the laws were so well known, and the bar so enlightened, that if an improper act were to be committed by any judge, it was sure to be detected, exposed, and punished. Although the judges in Canada were not made independent by this bill, as it was at present conceived improper to appoint them but during their good behavior, yet he conceived the time was very near when this could be done, so as to be productive of the greatest good. Before it could be done, there must be a general system of

known laws, and such salaries settled on judges, as would induce men of real abilities to undertake the office.*

The author of the pamphlet makes several suggestions relative to the fees of the principal officers of the courts, and the execution of the precepts directed to them; the qualification of justices of the peace; the prison of Montreal; the improvement of the navigation upon the St Lawrence; the extension of the commerce with the United States,† and the suppression of the smuggling trade; a bankrupt law, together with the subject of the rate of damages on protested bills of exchange; and the promotion of agriculture and internal improvement.

It appears, from another part of the pamphlet, that the assembly had passed a bill, giving to the subjects the right of commencing suits against the crown; but the council refused to concur in it.

It is stated, at the conclusion, that the annual subsidy voted to the government, including the salary of the lieutenant governor (in the absence of lord Dalhousie), amounted to £64,000 and the permanent militia pensions to about £47,000.

The province is free from all public debt, notwithstanding the expenses for the construction of the *Canal de la Chine*.

We have omitted to mention at the head of the present review, a Report of the committee of the house of assembly on the decision of the courts of justice, upon the question as to the use of the French or English language in the original process; and we have also in our possession, a pamphlet on the same subject, entitled, ‘Letter to the Honorable Judge Bowen, one of the Judges of the King’s Bench for the District of Quebec. (Montreal, James Lane, 1825.)’ A good deal of sensibility is shown in regard to what is considered as a decisive step towards the proscription of the French language in official proceedings.

But it is time to bring these remarks, for the present, to a close. At some future period we hope to follow up the discussions, of which we have given a brief sketch in the preceding pages, to an epoch more recent, and to enable our readers to form a proper opinion, respecting the present relations of Great

* Parl. Hist. vol. xxix. p. 658.

† A committee of the house of assembly made a report on the 11th of March, 1825, recommending the further encouragement of that commerce: but it was not considered for want of time.

Britain and her North American colonies. Our limits permit us only at this time to add, that those discussions are still in the unsettled state in which we have represented them; that a good deal of irritation has lately been observed between the principal delegate of the executive power and the second branch of the the legislative body of Lower Canada; that the union of the two Canadas is still dreaded by the French inhabitants; and that probably before long, the British government will come to some decisive measure, either to satisfy or to silence the pretensions of its Canadian population. Meanwhile, the military defence of Lower Canada is incessantly attended to by the governor and the other generals entrusted with the superintendence of the fortifications of Quebec; and Great Britain is furnishing largely the means required to carry them to an extent and to give them a strength, which may in time make of the capital of Lower Canada a rival of the impregnable fortresses of Europe, and thus add a new feature to the military character of the country.

ART. II.—*Storia dell' America, in Continuazione del Compendio della Storia Universale, del Sig. Conte di Segur. Opera originale Italiana.* Milano, presso la Società Tipographica de' Classici Italiani (Fusi, Stella, e Compagni.) Tom. 29, in 18mo. 1820—1823.

THESE volumes have not, so far as our observation extends, been criticised or even mentioned in any American journal. The work amply deserves, respectful notice at our hands, as well for its general subject matter, being the history of the whole continent of America, as for the merit of its execution. It was undertaken, as it appears, at the suggestion of the intelligent publishers in Milan; who, at the commencement of the publication, hardly anticipated the value and magnitude of the book, which they were calling into existence. Its design originated in a Compendium of Universal History, commenced by count Segur but not completed, which the publishers of the book before us procured to be translated from the French into Italian, and printed by subscription at Milan. Twenty-seven volumes of the Compendium as composed by